

MEMORANDUM

STATE OF ALASKA Office of the Governor Division of Governmental Coordination

TO: Coastal Policy Council
DATE: November 21, 2002

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SUBJECT: Proposed Regulation Revisions to Alaska Administrative Code (AAC), Title 6, Chapter 50, Process for Consistency Determination, Review, and Petition for Coastal Management

The Division of Governmental Coordination (DGC) drafted proposed regulatory revisions to the consistency review process at 6 AAC 50 in cooperation with the Alaska Coastal Management Program (ACMP) Working Group members, representatives from coastal resource districts, the Department of Law, state resource agency staff, DGC staff, and interested members of the public. The purpose of the regulation revisions are to implement, interpret, and make specific Alaska Statutes (AS) 44.19 and AS 46.40 with regard to the consistency review process, and includes the amendment, repeal, and re-adoption of certain sections, and the addition of new sections to 6 AAC 50.

Following the Department of Law's legal and technical review of the regulatory revisions, the Council unanimously approved and re-adopted the proposed regulatory revisions at the October 9, 2002 meeting. DGC incorporated the amendments and forwarded the proposed regulatory revisions to the United States Secretary of Commerce, National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management (OCRM) for review and incorporation into the ACMP as a "routine program change." OCRM has identified certain provisions within the regulation revisions that conflict with federal law, and require amendment to the regulatory revisions prior to approval. The conforming amendments identified by OCRM require the Council's review, approval, and re-adoption of the regulatory revisions.

The Council will meet on November 27, 2002 to discuss and re-adopt the required amendments to the proposed regulations. This meeting will be by teleconference, is not a public hearing, and no oral or written public comment will be taken or accepted. At this meeting, DGC will present the amended proposed regulation revisions to the Council for review, approval, and re-adoption.

SUMMARY AND SUBSTANCE OF THE OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT'S REVIEW

DGC submitted the proposed regulatory revisions to OCRM as a "routine program change" to the ACMP under 15 C.F.R. 923.84. This submission to and review by OCRM is required for any amendment, modification, or change to the ACMP.

OCRM reviewed the regulatory revisions to ensure that they can be processed as a “routine program change” and that the contents of the regulatory revisions comply with federal law. OCRM has advised DGC that certain provisions within the regulations revisions conflict with federal law, cannot be approved as proposed, and must be amended to comply with the federal regulations at 15 C.F.R. 930. If the changes identified (see below) are made, OCRM could approved the regulatory revisions, as amended, and they would be incorporated into the ACMP as a routine program change.

SUMMARY OF PROPOSED REGULATION REVISIONS

The provisions identified by OCRM are included below, along with amended language that would bring the provisions into conformance with the federal regulations. The underlined text is new language; the [CAPITALIZED AND BRACKETED] text is deleted language.

6 AAC 50.025. Scope of project subject to consistency review. (a) Except for a project subject to review under 6 AAC 50.305 – 6 AAC 50.395 or 6 AAC 50.405 – 6 AAC 50.495, the [THE] coordinating agency, in consultation with the applicant, any resource agency that requires an authorization, and any potentially affected coastal resource district, shall determine the scope of the project subject to a consistency review. For a project subject to review under 6 AAC 50.305 – 6 AAC 50.395, the scope of the project subject to a consistency review shall be determined in accordance with 15 C.F.R. 930.30 – 930.46. For a project subject to review under 6 AAC 50.405 – 6 AAC 50.495, the scope of the project subject to a consistency shall be determined in accordance with 15 C.F.R. 930.50 – 930.66 or 15 C.F.R. 930.70 – 930.85.

6 AAC 50.325. Federal consistency determination. (a) Upon receipt of a federal consistency determination, DGC shall review it for completeness in accordance with the requirements of 15 C.F.R. 930.39(a), and shall immediately notify the federal agency if the determination is not complete.

(b) [TO THE EXTENT REQUIRED BY FEDERAL LAW, A FEDERAL CONSISTENCY DETERMINATION MUST INCLUDE

(1) A COPY OF ANY NECESSARY RESOURCE AGENCY AUTHORIZATION APPLICATION; THE APPLICATION MUST MEET THE AUTHORIZING AGENCY’S STATUTORY AND REGULATORY REQUIREMENTS FOR COMPLETENESS; AND

(2) COMPLETED COPIES OF ALL NECESSARY FEDERAL AUTHORIZATION APPLICATIONS.

(c)] DGC may request that the federal agency provide additional copies of the consistency review packet, maps, or other documents that DGC cannot duplicate conveniently.

6 AAC 50.335. Initiation of consistency review of a federal consistency determination. (a) The consistency review process, as contained in 6 AAC 50.305 - 6 AAC 50.395, shall be initiated, coordinated, and completed [, TO THE EXTENT PRACTICABLE,] within the timeframes specified in 15 C.F.R. 930.30 - 930.46.

[6 AAC 50.430. DETERMINATION OF THE SCOPE OF THE PROJECT SUBJECT TO CONSISTENCY REVIEW. BEFORE THE INITIATION OF THE CONSISTENCY REVIEW AND WITHIN THE TIMEFRAMES ESTABLISHED UNDER 6 AAC 50.435, DGC SHALL DETERMINE THE SCOPE OF THE PROJECT SUBJECT TO REVIEW IN ACCORDANCE WITH 6 AAC 50.025 AND 6 AAC 50.700.]

6 AAC 50.800. Project modifications during a consistency review. Except for a project subject to review under 6 AAC 50.305 – 6 AAC 50.395 or 6 AAC 50.405 – 6 AAC 50.495, the [A] coordinating agency may terminate a consistency review if, after initiation of the consistency review,

- (1) the coordinating agency receives information that indicates an additional authorization subject to the consistency review is required; or
- (2) the applicant substantially modifies the description of the project.

6 AAC 50.810. Project modifications after issuance of a final consistency determination. ...

(j) A modification to a federal agency activity shall be addressed under 15 C.F.R. 930.30 – 930.46 [15 C.F.R. 930.45 and 930.46]. A modification to a project requiring a federal license or permit shall be addressed under 15 C.F.R. 930.50 – 930.66 or 15 C.F.R. 930.70 – 930.85.

COUNCIL REVIEW OF AMENDMENTS

The regulatory revisions, as adopted by the Council on October 9, 2002, can be found and downloaded at <http://www.gov.state.ak.us/dgc/Regulations/acmpregs.html>. The Council should review the amendments identified above within the context of the regulations adopted in October to fully understand the required changes. DGC will explain the rationale for the OCRM amendments at the meeting scheduled for November 27, 2002.

FURTHER APPROVAL PROCESSES

Following Council review, approval, and re-adoption of the regulatory revisions, the amendments will be forwarded to OCRM. We anticipate OCRM will approve the regulatory amendments as a “routine program change” to the ACMP. Upon OCRM approval, the regulatory revisions will be forwarded to the Lieutenant Governor's Office for filing, and will become effective 30 days later or on a date specified by the Council.

RECOMMENDATION

The DGC recommends the Coastal Policy Council adopt the regulatory revisions to the consistency review regulations at 6 AAC 50, and request that the Lt. Governor's Office establish an effective date for these regulations to be January 21, 2003.